

REMARKS

This Preliminary Amendment is being filed to accompany the Request for Continued Examination (RCE) filed on September 2, 2003. In the parent application, Claims 10-17, 23-25, 38 and 39 were allowed by the Action of 13 Aug. 2003, marked Supplemental Notice of Allowability. Claims 1-9, 18-22, and 26-37, in the parent application were canceled in prior amendments. Claims 26-37 were rejected as anticipated in a previous Office Action, and therefore Applicant choose to cancel those claims. However, it was subsequently discovered that Claims 26-37 were dependent on allowable subject matter in that they depended on allowable Claim 10. Thus, in the present communication, Applicant has re-presented claims 26-37 as "New" Claims 40-51. Claims 52-70 have been additionally filed and contain no new matter. Reexamination and reconsideration are respectfully requested.

NEW INDEPENDENT CLAIM 52

New independent Claim 52 contains among other limitations, "means for releasably attaching the pick to the thumb sleeve." This limitation, in the previous prosecution, was considered anticipated by Newman, US Pat. No. 5,837,913. The reason that a "releasably attached" pick and thumb sleeve was deemed anticipated by the art, is that Newman illustrates in Fig. 4 a sleeve that is absent a pick. However, it is unclear whether Newman teaches a "releasable" pick by studying its drawings alone because the sleeve 40 is simply illustrated devoid of a pick 30. The specification of Newman though, makes clear that the pick 30 is

not a releasably attached pick. In col. 6, lines 1-40 Newman describes an engaging fastener 85 and binding element 92 that are used to secure the pick 30, but all teachings suggest a permanent attachment. In this way, Newman teaches away from the novel concept of a releasable attachment.

It is respectfully submitted Newman nor any of the other previously cited references, taken either alone or in combination with one another, either disclose or make obvious "means for releasably attaching the pick to the thumb sleeve," as recited in new independent Claim 52.

In addition, the invention as presently claimed in Claim 52 contains "a thumb sleeve configured to be disposed around the thumb of the user, whereby said pick apparatus is configured for use by the user having said thumb." Conversely, the structure disclosed by Newman, is not, and cannot be configured to be used on the thumb of a user. Therefore, the structure of the presently claimed invention, or its cooperation of structure, is novel in that it contains its other recited limitations and it is additionally configured so that it is used on the thumb of a user.

NEW INDEPENDENT CLAIM 65

New independent Claim 65 contains among other limitations, a sleeve comprising a fabric material and "a seam in the fabric material, used in joining said fabric material." No references in the prior art known to Applicant, taken either alone or in combination disclose or make obvious a sleeve with this structure as recited in new independent Claim 65. No new matter has been

presented in Claim 65. Seam 79 of the presently claimed invention is supported in Fig. 12 and in the specification at paragraph [0055] of the published document. Applicant therefore respectfully asserts that Claim 65 is novel, allowable and contains no new matter.

SUMMARY

Based on the above amendments and accompanying remarks, Applicant respectfully submits that all pending claims are in condition for allowance and respectfully requests a Notice of Allowance. Applicants encourage the Examiner to telephone the undersigned attorney if it appears that a telephone conference would facilitate allowance of the application.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

September 10, 2003

by Angela Williams

Signature

September 10 2003

Respectfully submitted,



Richard L. Myers

Registration No. 26,490

Myers Dawes Andras & Sherman LLP

19900 MacArthur Boulevard, Suite 1150

Irvine, CA 92612

(949) 223-9600